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Philip ak Luney v Public Prosecutor

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HIGH COURT (SIBU) — CRIMINAL REVISION APPLICATION SBW-44-2–5 OF 2024
WONG SIONG TUNG J
27 JULY 2024

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Criminal Law — Revision — Application for revision — Applicant applied for revision of magistrates court decision in imposing cash bail of RM10,000 with two sureties for accused release pending trial — Whether part of magistrate's decision in imposing a cash bail of RM10,000 on accused for release pending trial unauthorised by law — Whether part of order made by magistrate imposing cash bail ought to be set aside

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The applicant ('accused') was charged in the magistrates court with two counts of cheating and dishonestly inducing delivery of property under s 420 of the Penal Code. The accused pleaded not guilty to both charges. The magistrate then imposed a cash bail of RM10,000 with two sureties for the accused's release pending trial. Additionally, the accused was required to report to the investigating officer until the case was disposed of. The accused, therefore, applied under s 323 of the Criminal Procedure Code ('the CPC') for a revision regarding the correctness, legality, or propriety of the magistrate's decision to impose a cash bail. The issue that arose for determination was whether that part of the magistrate's decision in imposing a cash bail of RM10,000 upon the accused for his release pending trial was correct, legal, or proper.

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Held, allowing the application for revision:

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(1) The admission of an accused to bail is governed by ss 387–394 of the CPC. Before a person is released on bail or on bond as required or ordered, s 390 of the CPC only requires the accused and/or his sureties, as may be ordered, to execute a bond in the prescribed Form 3 in the Second Schedule to the CPC. The prescribed Form 3 contemplates the furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties as may be required, not payment by cash. This indicated that the court was not authorised to impose a cash bail (see paras 5–6).

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(2) The court was not authorised impose a cash bail upon an accused person for his or her release pending trial in the first place. Section 403 of the CPC only allowed an accused, when bail with sureties was imposed by the court (except in the case of a bond for good behaviour), to offer cash to be deposited in lieu of execution of bond by sureties if the accused was

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unable to find any. This cash deposit may be accepted or rejected by the court. It was the accused's option to offer the deposit of cash, not for the court to impose cash bail in the first place. Hence, the magistrate was neither authorised nor correct in imposing a cash bail on the accused for his release. Therefore, the part of the order made by the magistrate on, requiring and imposing a cash bail of RM10,000 upon the accused for his release, ie requiring the accused to deposit a cash sum as bail bond for his release, was unauthorised by law and was illegal (see paras 12–14).

(3) The court allowed the accused's application for revision and the part of the order made by the magistrate imposing cash bail was accordingly set aside. The accused was released pending trial of the charges against him in the magistrates court upon his execution of a bail bond in the sum of RM10,000 with two local sureties. Any cash paid by the accused in respect of the cash bail ordered by the magistrate was ordered to be refunded (see paras 16–18).

[Bahasa Malaysia summary

Pemohon ('tertuduh') didakwa di mahkamah majistret dengan dua pertuduhan menipu dan dengan curangnya mendorong penyerahan harta di bawah s 420 Kanun Keseksaan. Tertuduh mengaku tidak bersalah atas kedua-dua pertuduhan. Majistret kemudian mengenakan ikat jamin RM10,000 tunai dengan dua penjamin bagi pembebasan tertuduh sementara menunggu perbicaraan. Selain itu, tertuduh dikehendaki melaporkan kepada pegawai penyiasat sehingga kes selesai. Oleh itu, tertuduh memohon di bawah s 323 Kanun Tatacara Jenayah ('KTJ') untuk semakan mengenai ketepatan, kesahihan atau kewajaran keputusan majistret untuk mengenakan jaminan tunai. Isu yang timbul untuk penentuan adalah sama ada sebahagian keputusan majistret yang mengenakan jaminan RM10,000 tunai ke atas tertuduh untuk pembebasannya sementara menunggu perbicaraan adalah betul, sah atau wajar.

Diputuskan, membenarkan permohonan untuk semakan:

(1) Pengakuan tertuduh untuk diikat jamin dikawal oleh ss 387–394 KTJ. Sebelum seseorang dibebaskan dengan ikat jamin atau bon seperti yang dikehendaki atau diperintahkan, s 390 KTJ hanya menghendaki tertuduh dan/atau penjaminnya, seperti yang diperintahkan, untuk melaksanakan bon dalam Borang 3 yang ditetapkan dalam Jadual Kedua kepada KTJ. Borang 3 yang ditetapkan mempertimbangkan pemberian bon peribadi oleh orang yang dituduh dan bon oleh seorang atau lebih penjamin yang mencukupi seperti yang diperlukan, bukan pembayaran secara tunai. Ini menunjukkan bahawa mahkamah tidak diberi kuasa untuk mengenakan jaminan tunai (lihat perenggan 5–6).

(2) Mahkamah tidak dibenarkan mengenakan jaminan tunai ke atas tertuduh untuk pembebasannya sementara menunggu perbicaraan pada mulanya. Seksyen 403 KTJ hanya membenarkan tertuduh, apabila jaminan dengan penjamin dikenakan oleh mahkamah (kecuali dalam kes bon untuk berkelakuan baik), untuk menawarkan wang tunai untuk didepositkan sebagai ganti pelaksanaan bon oleh penjamin jika tertuduh tidak mendapatkannya. Deposit tunai ini boleh diterima atau ditolak oleh mahkamah. Ia adalah pilihan tertuduh untuk menawarkan deposit wang tunai, bukan untuk mahkamah mengenakan jaminan tunai pada mulanya. Oleh itu, majistret tidak diberi kuasa dan tidak betul dalam mengenakan jaminan tunai ke atas tertuduh untuk pembebasannya. Oleh itu, sebahagian perintah yang dibuat oleh majistret dalam, menghendaki dan mengenakan jaminan RM10,000 tunai ke atas tertuduh untuk pembebasannya, iaitu, menghendaki tertuduh mendepositkan sejumlah wang tunai sebagai bon jaminan untuk pembebasannya, adalah tidak dibenarkan oleh undang-undang dan adalah tidak sah (lihat perenggan 12–14).

(3) Mahkamah membenarkan permohonan tertuduh untuk semakan dan sebahagian perintah yang dibuat oleh majistret yang mengenakan jaminan tunai diketepikan sewajarnya. Tertuduh dibebaskan sementara menunggu perbicaraan pertuduhan terhadapnya di mahkamah majistret selepas melaksanakan bon jaminan berjumlah RM10,000 dengan dua penjamin warga tempatan. Sebarang wang tunai yang dibayar oleh tertuduh berkenaan dengan jaminan tunai yang diperintahkan oleh majistret telah diarahkan untuk dikembalikan (lihat perenggan 16–18).]

Cases referred to

Afsar Khan vs State By Girinagar Police, Bangalore 1992 Cri LJ 1676, HC (refd)
Asia Commercial Finance (M) Berhad v Bank Bumiputra Malaysia Berhad & Ors [1988] 1 MLJ 33 (refd)
Hussaini Tan B Mohamad Jaya Tan v PP [2003] MLJU 824, HC (refd)
Lau Kung Seng & Ors v PP [1997] 5 MLJ 323, HC (refd)
RR Chari vs Emperor AIR (1948) All 238, HC (refd)
Rajballam Singh v Emperor AIR 1943 Patna 375, HC (refd)
State of Mysore v H Venkatarama Kotaiyah 1968 Cr LJ 696, HC (refd)
Sulfee Alias v PP [2005] 5 CLJ 132, HC (refd)

Legislation referred to

Criminal Procedure Code ss 323, 387, 388, 389, 390, 391, 392, 393, 394, 403, Second Schedule
Criminal Procedure Code [IN] ss 499, 513
Penal Code s 420

Yap Hoi Liong (with Ben Lau Le bin) (Yap Hoi Liong & Co) for the applicant.
Mark Kenneth Netto (Deputy Public Prosecutor, Attorney General's Chambers Malaysia) for the respondent.

Wong Siong Tung J:

[1] On 5 July 2024, the applicant/accused was charged in the magistrates' court under Case No SBW-82-1–5 of 2024 with two counts of cheating and dishonestly inducing delivery of property under s 420 of the Penal Code. The applicant/accused pleaded not guilty to both charges.

[2] The learned magistrate imposed a cash bail of RM10,000 with two sureties for the applicant/accused's release pending trial. Additionally, the applicant/accused was required to report to the investigating officer on the first day of each month until the case is finally disposed of.

[3] The applicant/accused applies to this court under s 323 of the Criminal Procedure Code ('the CPC') for a revision regarding the correctness, legality, or propriety of the learned magistrate's decision to impose a cash bail.

[4] Thus, the key issue in this revision is whether that part of the learned magistrate's decision imposing a cash bail of RM10,000 upon the applicant/accused for his release pending trial is correct, legal, or proper.

[5] The admission of an accused to bail is governed by ss 387–394 of the CPC. Before a person is released on bail or on bond as required or ordered, s 390 of the CPC only requires the accused and/or his sureties, as may be ordered, to execute a bond in the prescribed Form 3 in the Second Schedule to the CPC.

[6] The prescribed Form 3 contemplates the furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties as may be required, not payment by cash. This indicates that the court is not authorised to impose a cash bail.

[7] Form 3 in the Second Schedule to CPC is an integral part of the statute and having the same force of law as the provisions in CPC.

See: *Asia Commercial Finance (M) Berhad v Bank Bumiputra Malaysia Berhad & Ors* [1988] 1 MLJ 33.

[8] Section 403 of the CPC provides that when any person is required by any court or officer to execute a bond, with or without sureties, the court or officer

may, except in the case of a bond for good behaviour, permit the person to deposit a sum of money, in an amount fixed by the court, instead of executing the bond.

[9] In *RR Chari vs Emperor* AIR (1948) All 238 at p 239, the Allahabad High Court in construing a similar provision under s 499 of the Indian Criminal Procedure Code to s 390 of our CPC, and also similar provision under s 513 of the Indian Criminal Procedure Code to s 403 of our CPC, held that:

> The language of s 499, Criminal PC makes it perfectly clear that what that section *contemplates is the furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties*. The accused as well as the sureties have, therefore, to execute only bonds which are sufficient in the mind of the Magistrate for the amount which he might have fixed. This is also the view taken by the Patna High Court in AIR 1948 Pat 375 and I respectfully agree with it. *Section 513 provides for a concession to an accused person who is unable to produce sureties. That section also makes it clear that the Magistrate is not bound to accept cash, but may permit an accused person to deposit a sum of money in lieu of executing a personal bond and giving surety of some persons. That section, however, does not authorise a demand of cash by a Magistrate.* (Emphasis added.)

[10] After an accused is admitted to bail, under s 403 of the CPC, the court is permitted to accept a deposit of cash from an accused only when the accused offered in lieu of executing the bond by the accused and/or by the sureties. The court may, of course, reject the accused's offer of cash deposit in lieu of execution of bond by sureties if there are valid reasons, such as the inability of the accused to procure one due to the accused's character being such that no one can assure the accused's attendance at the trial and unwilling to stand as the accused's surety and guarantee the accused's attendance at trial.

[11] Thus, in *Lau Kung Seng & Ors v Public Prosecutor* [1997] 5 MLJ 323, the High Court held that the imposition of cash bail upon an accused person at the first place otherwise that under the condition stipulated in s 403 of the CPC is illegal and the application for revision was allowed.

See also: *Hussaini Tan B Mohamad Jaya Tan v Public Prosecutor* [2003] MLJU 824; *Sulfee Alias v Public Prosecutor* [2005] 5 CLJ 132; *Rajballam Singh v Emperor* AIR 1943 Patna 375; *State of Mysore v H Venkatarama Kotaiyah* 1968 Cr LJ 696; and *Afsar Khan vs State By Girinagar Police, Bangalore* 1992 Cri LJ 1676.

[12] In summary, the court is not authorised impose a cash bail upon an accused person for his or her release pending trial in the first place. Section 403 of the CPC only allows an accused, when bail with sureties is imposed by the

court (except in the case of a bond for good behaviour), to offer cash to be deposited in lieu of execution of bond by sureties if the accused was unable to find any. This cash deposit may be accepted or rejected by the court. It is the accused's option to offer the deposit of cash, not for the court to impose cash bail in the first place.

[13] For the reasons as given, this court finds that the learned magistrate was neither authorised nor correct in imposing a cash bail on the applicant/accused for his release on 7 May 2024.

[14] Therefore, that part of the order made by the learned magistrate on 7 May 2024, requiring and imposing a cash bail of RM10,000 upon the applicant/accused for his release, ie, requiring the applicant/accused to deposit a cash sum as bail bond for his release, is unauthorised by law and is illegal as conceded by the learned DPP.

[15] Regarding the DPP's submission that this court should direct the learned magistrate to hold an inquiry into the sufficiency of the applicant's/accused's sureties, which the applicant/accused seems to be able to provide and were accepted by the lower court, it suffices to say that if the prosecution believes the sureties as furnished are insufficient, it is for the prosecution to raise the matter before the magistrates' court. This is a completely different issue and has nothing to do with the subject matter of the revision herein, which is directed against the imposition of the cash bail upon the applicant by the learned magistrate in the first place.

[16] In the premises, this court allows the applicant's/accused's application for revision. The part of the order made by the learned magistrate on 7 May 2024, imposing cash bail is set aside.

[17] The applicant/accused shall be released pending trial of the charges against him in the magistrates' court upon his execution of a bail bond in the sum of RM10,000 with two local sureties. He is to report to the investigation officer on the first day of each month until the disposal of the case.

[18] Any cash paid by the applicant/accused in respect of the cash bail ordered by the learned magistrate shall be refunded.

Application for revision allowed.

Reported by K Selvaraju